

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) Cr. No. 18-2945 WJ
)
SIRAJ IBN WAHHAJ,)
HUJRAH WAHHAJ,)
SUBHANAH WAHHAJ, and)
LUCAS MORTON,)
)
Defendants.)

UNITED STATES' MOTION FOR A *LAFLER-FRYE* HEARING

The United States of America respectfully moves this Court to order a hearing before a United States Magistrate Judge to inquire of Defendants Siraj Ibn Wahhaj, Hujrah Wahhaj, Subhanah Wahhaj, and Lucas Morton (“Defendants”), and their counsel, whether defense counsel communicated to the Defendants the plea offer extended by the United States in this matter. In support of this motion, the United States provides:

1. Under *Missouri v. Frye*, 566 U.S. 134 (2012), and *Lafler v. Cooper*, 566 U.S. 156 (2012), a defendant has the right to effective assistance of counsel during pre-trial plea negotiations, including as to plea offers that lapse or are rejected.
2. On January 23, 2023, the United States extended a written plea offer to Defendants Siraj Ibn Wahhaj, Hujrah Wahhaj, and Subhanah Wahhaj via their counsel by emailing a letter and proposed Plea Agreement. A plea offer was mailed to Defendant Lucas Morton, and also emailed to his stand-by counsel, the same day. The deadline for acceptance of the government’s plea offers was Friday, February 10, 2023.

3. The time for acceptance of the United States' plea offers has lapsed without acceptance. Defendants Siraj Ibn Wahhaj and Subhanah Wahhaj, through counsel, have affirmatively rejected the plea offers. Defendant Lucas Morton previously advised undersigned counsel that he rejected the plea offer.

4. To protect against any future claim of ineffective assistance of counsel on this issue, the United States respectfully requests that the Court direct a U.S. Magistrate Judge to inquire on the record at a hearing whether defense counsel informed the Defendants of the United States' plea offers and whether the Defendants chose to reject the offers. Specifically, the United States respectfully requests the Court undertake an inquiry on the record so that a clear record will exist in the event the Defendants are convicted at trial and subsequently bring a claim under 28 U.S.C. § 2255 alleging that their attorneys failed to effectively convey the United States' plea offer to them. For the Court's convenience, the United States provides the following as an example of the language the Court might use during such an inquiry:

I am informed that the government made you a plea offer dated January 23, 2023, that you rejected.

Do not tell me about the content of any discussion between you and your counsel. Do not tell me the terms of any plea offer made by the government. This Court is not involved in any plea negotiations and states no opinion regarding your decision to plead guilty or proceed to trial. I simply request a yes or no answer to the following questions:

First, did you discuss with your attorney the plea offer made by the government?

Second, are you satisfied that, prior to rejecting the plea offer, you had a full and complete opportunity to discuss the plea offer with your attorney?

5. Counsel for Defendants Siraj Ibn Wahhaj, Hujrah Wahhaj, and Subhanah Wahhaj do not oppose this motion. Defendant Lucas Morton has not been contacted and is presumed to oppose this motion.

Respectfully submitted,

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Electronically filed
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I HEREBY CERTIFY that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will cause a copy of this filing to be sent to counsel for Defendants, and a copy of this filing was mailed to Defendant Lucas Morton.

/s/
KIMBERLY A. BRAWLEY
Assistant United States Attorney